

220 ILCS 5/8-508.1

Formerly cited as IL ST CH 111 2/3 ¶ 8-508.1

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 5. PUBLIC UTILITIES ACT
ARTICLE VIII. SERVICE OBLIGATIONS AND CONDITIONS

Current through P.A. 91-703, apv. 5/16/2000

5/8-508.1. Decommissioning trusts

§ 8-508.1. (a) As used in this Section:

(1) "Decommissioning" means the series of activities undertaken at the time a nuclear power plant is permanently retired from service to ensure that the final entombment, decontamination, dismantlement, removal and disposal of the plant, including the plant site, and of any radioactive components and materials associated with the plant, is accomplished in compliance with all applicable Illinois and federal laws, and to ensure that such final disposition does not pose any threat to the public health and safety.

(2) "Decommissioning costs" means all reasonable costs and expenses incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant at the time of decommissioning, including all expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and to be incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses, less proceeds of insurance, salvage or resale of machinery, construction equipment or apparatus the cost of which was charged as a decommissioning expense.

(3) "Decommissioning trust" or "trust" means a fiduciary account in a bank or other financial institution established to hold the decommissioning funds provided pursuant to subsection (b)(2) of this Section for the eventual purpose of paying decommissioning costs, which shall be separate from all other accounts and assets of the public utility establishing the trust.

(4) "Nuclear power plant" or "plant" means a nuclear fission thermal power plant. Each unit of a multi-unit site shall be considered a separate plant.

(b) By 90 days after the effective date of this amendatory Act of 1988, or by the date that the unit satisfies the criteria used by the Internal Revenue Service for

determining when depreciation commences for federal income tax purposes on a new generating unit, whichever is later, every public utility that owns or operates, in whole or in part, a nuclear power plant shall:

(1) establish 2 decommissioning trusts, which shall be a "tax qualified" decommissioning trust and a "non-tax qualified" decommissioning trust and shall hold the decommissioning funds established by the public utility for all nuclear power plants pursuant to subsection (b)(2) of this Section;

(2) establish 2 decommissioning funds for each such plant, each of which shall be held for a plant as a separate account in a decommissioning trust; and

(3) designate an independent trustee, subject to the approval of the Commission, to administer each of the decommissioning trusts.

(c) The 2 decommissioning trusts shall be known as the "tax qualified" decommissioning trust and the "non-tax qualified" decommissioning trust respectively. Each trust shall be established and maintained as follows:

(1) The "tax qualified" trust shall be established and maintained in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto and shall be funded by the public utility for each such power plant through annual payments by the public utility that shall not exceed the maximum amount allowable as a deduction for federal income tax purposes for the year for which the payments were made, in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(2) The "non-tax qualified" decommissioning trust shall be funded by the public utility for each such power plant through annual payments by the public utility that shall consist of the difference between the total amounts of decommissioning expenses collected after the effective date of this amendatory Act of 1988 through rates and charges from the public utility's customers as provided by the Commission minus the amounts contributed to the "tax qualified" trust as provided by subsection (c)(1) of this Section and deductible for federal income tax purposes in accordance with Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(3) The following restrictions shall apply in regard to administration of each decommissioning trust:

(i) Distributions may be made from a nuclear decommissioning trust only to satisfy the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust.

(ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which

the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers.

(iii) In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.

(iv) The trustee shall invest the "tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested, subject to the limitations specified in Section 468A of the Internal Revenue Code of 1986 or any successor thereto.

(v) The trustee shall invest the "non-tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested. However the trustee shall not invest any portion of the "non-tax qualified" trust's funds in the securities or assets of any operator of a nuclear power plant.

(vi) The "non-tax qualified" trust shall be subject to the prohibitions against self-dealing applicable to the "tax qualified" trust as specified in Section 468A of the Internal Revenue Code of 1986, or any successor thereto.

(vii) All income earned by the trust's funds shall become a part of the trust's funds and subject to the provisions of this Section.

(viii) The Commission may adopt by rule or regulation such further restrictions as it deems necessary for the sound management of the trust's funds, consistent with the purposes of this Section.

(d) By 90 days after the effective date of this amendatory Act of 1988, the Commission shall determine an appropriate method to segregate, either internally or externally, all decommissioning funds collected prior to the effective date of this amendatory Act of 1988 by the utility from its customers, and shall order any change in past decommissioning funding methods that the Commission finds necessary. In making its determination of the appropriate funding method, the Commission shall give consideration to, but not be limited by, all applicable federal regulations. The change in funding method shall be phased-in over an appropriate period of time.

(e) The trustee of a trust shall report annually to the Commission, or more frequently if ordered by the Commission. The report shall include:

- (1) the trust's State and federal tax returns;
 - (2) a report on the trust's portfolio of investments and the return thereon;
 - (3) the date and amount of payments received by the trust from the public utility;
 - (4) a copy of all correspondence between the trust and the Internal Revenue Service; and
 - (5) any other information the Commission orders the trust to provide.
- (f) A nuclear decommissioning trust established pursuant to this Section shall be exempt from taxation in Illinois.

CREDIT(S)

1993 Main Volume

Laws 1921, p. 702, § 8-508.1, added by P.A. 85-1400, § 2, eff. Sept. 12, 1988.

FORMER REVISED STATUTES CITATION

1993 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 111 2/3, ¶ 8-508.1.

220 ILCS 5/9-201.5

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 5. PUBLIC UTILITIES ACT
ARTICLE IX. RATES

Current through P.A. 91-703, apv. 5/16/2000

5/9-201.5. Decommissioning nuclear power plants; rates

§ 9-201.5. Decommissioning nuclear power plants; rates.

(a) The Commission may after hearing, in a rate case or otherwise, authorize the institution of rate provisions or tariffs that increase or decrease charges to customers to reflect changes in, or additional or reduced costs of, decommissioning nuclear power plants, including accruals for estimates of those costs, irrespective of any changes in other costs or revenues; provided the revenues collected under such rates or tariffs are used to recover costs associated with contributions to appropriate decommissioning trust funds or to reduce the amounts to be charged under such rates or tariffs in the future. These provisions or tariffs shall hereinafter be referred to as "decommissioning rates".

(b) A public utility that does not have a decommissioning rate in effect on the effective date of this amendatory Act of 1994 may not place a decommissioning rate in effect before January 1, 1995. Changes in charges under a decommissioning rate shall not be subject to the notice and filing requirements of subsection (a) of Section 9-201 of this Act, but a decommissioning rate of a utility that does not have such a rate in effect before the effective date of this amendatory Act of 1994 shall provide that no increase in charges under that rate may take effect until 60 days after the utility provides the proposed increased charge to the Commission for review. The Commission may require that a decommissioning rate contain provisions for reconciling amounts collected under the rate with both reasonably projected costs and actual costs prudently incurred. As used in this Section, "decommissioning costs" and "decommissioning trust fund" have the same meaning as in Section 8-508.1 of this Act.

(c) Nothing contained in this amendatory Act of 1994 shall affect any determination of the authority of the Commission before the effective date of this amendatory Act of 1994. Nothing contained in this amendatory Act of 1994 shall be used in any determination of the authority of the Commission after the effective date of this amendatory Act of 1994, except with respect to decommissioning rates.

(d) A decommissioning rate authorized by the Commission under this Section and the decommissioning cost studies underlying the rate shall be subject to hearing and review, in a rate case or otherwise, not less than once every 6 years.

CREDIT(S)

2000 Electronic Update

Laws 1921, p. 702, § 9-201.5, added by P.A. 88-653, § 5, eff. Jan. 1, 1995. Amended by P.A. 90-561, Art. I, § 10, eff. Dec. 16, 1997.

220 ILCS 5/16-114

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 5. PUBLIC UTILITIES ACT
ARTICLE XVI. ELECTRIC SERVICE CUSTOMER CHOICE AND RATE RELIEF
LAW OF 1997

Current through P.A. 91-703, apv. 5/16/2000

5/16-114. Recovery of decommissioning charges

§ 16-114. Recovery of decommissioning charges. On or before April 1, 1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity delivered or sold at retail in the electric utility's service area, including, but not limited to, sales by the electric utility to tariffed services retail customers, sales by the electric utility to retail customers pursuant to special contracts or other negotiated arrangements, sales by alternative retail electric suppliers, and sales by an electric utility other than the electric utility in whose service area the retail customer is located; provided, however, that for a user that obtained electric power and energy from its own cogeneration or self-generation facilities on or before January 1, 1997, and subsequently takes services from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the user is located for any portion of its electric power and energy requirements formerly obtained from those facilities, the tariff required by this Section shall not be applicable in any year to that portion of the user's electric power and energy requirements formerly obtained from those facilities, provided that for the purposes of this Section, such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the user became eligible for delivery services.

The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999. In making its determination, the Commission shall retain the authority it possessed prior to the effective date of this amendatory Act of 1997 to make jurisdictional allocations of decommissioning expense recovery. The tariff filed pursuant to this Section shall be applicable to any user taking some or all of its electric power and energy requirements from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the user is located on and after the date that the user becomes eligible for delivery services in accordance with Section 16-104. If the electric utility has in effect as of the effective date of this amendatory Act of 1997 a decommissioning rate as defined in Section 9-201.5 conforming to the

requirements of that Section, the tariff or tariffs required by this Section shall if the electric utility requests be consistent with its decommissioning rate that is already in effect; provided, that the tariff or tariffs filed pursuant to this Section shall provide for the removal from base rates of any decommissioning costs that are included in the electric utility's base rates and their inclusion in the tariff or tariffs required by this Section. The tariff required by this Section shall be included by the Commission in the reviews required by subsection (d) of Section 9-201.5.

CREDIT(S)

2000 Electronic Update

Laws 1921, p. 702, Art. XVI, § 16-114, added by P.A. 90-561, Art. I, § 5, eff. Dec. 16, 1997.

220 ILCS 5/16-114.1

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 5. PUBLIC UTILITIES ACT
ARTICLE XVI. ELECTRIC SERVICE CUSTOMER CHOICE AND RATE RELIEF
LAW OF 1997

Current through P.A. 91-703, apv. 5/16/2000

5/16-114.1. Recovery of decommissioning costs in connection with nuclear power plant sale agreement

§ 16-114.1. Recovery of decommissioning costs in connection with nuclear power plant sale agreement.

(a) An electric utility owning a single-unit nuclear power plant located in this State which enters into an agreement to sell the nuclear power plant and as part of such agreement agrees: (i) to make contributions to a tax-qualified decommissioning trust or non-tax qualified decommissioning trust, or both, as defined in Section 8-508.1 for the nuclear power plant, in specified amounts or for a specified period of time, after the sale is consummated, or (ii) to purchase an insurance instrument which provides for the payment of all or a specified amount of the decommissioning costs of the nuclear power plant, shall be entitled, in the case of item (i), to maintain such decommissioning trusts for the purpose of receiving such contributions after the consummation of the sale, to implement revisions to its decommissioning rate in accordance with subsection (b) of this Section, and to transfer such decommissioning trusts, or the balance in the trusts, to the buyer of the nuclear power plant in accordance with the agreement of sale, and in the case of item (ii), to implement revisions to its decommissioning rate in accordance with subsection (c) of this Section.

(b) An electric utility entering into an agreement of sale described in subsection (a)(i) of this Section shall be entitled to file a petition with the Commission for entry of an order authorizing the electric utility (i) to amortize its liability for decommissioning costs pursuant to the agreement of sale over the period of time in which the electric utility is required by such agreement to make additional contributions to the tax-qualified decommissioning trust, the non-tax qualified decommissioning trust, or both, and (ii) to revise its decommissioning rate to a level that will recover, over the time period specified in the agreement of sale, an annual amount equal to the electric utility's annual contributions to the decommissioning trusts which are required by the agreement of sale multiplied by the percentage of the output of the nuclear power plant which the agreement of sale obligates the electric utility to purchase in each such year.

(c) An electric utility entering into an agreement of sale described in subsection (a)(ii) shall be entitled to file a petition with the Commission for entry of an order authorizing the electric utility to revise its decommissioning rate to a level that will recover, over 5 years, the electric utility's cost of purchasing the insurance instrument multiplied by the percentage of the output of the nuclear power plant which the agreement of sale obligates the electric utility to purchase in each such year.

(d) An electric utility's petition pursuant to subsection (b) or subsection (c) shall state the percentage of the output of the nuclear power plant which the agreement of sale obligates the electric utility to purchase from the new owner of the nuclear power plant in each of the years for which the electric utility is seeking to implement a revised decommissioning rate. The electric utility's petition shall also state that the electric utility agrees, as conditions of the Commission's order and the implementation of the revised decommissioning rate, (i) to file revisions, pursuant to Section 16-111(f), to its base rate tariffs applicable to retail customers subject to the electric utility's decommissioning rate reducing such tariffs, and (ii) to file revisions to its transition charge tariffs applicable to retail customers subject to the electric utility's decommissioning rate incorporating a credit into the calculation of the electric utility's transition charges in accordance with this subsection. The reduction and the credit shall be in an amount per kilowatt-hour of electricity sold or delivered to retail customers equal to (i) the electric utility's decommissioning rate authorized by the Commission's order in accordance with subsection (b)(ii) or (c), as applicable, less (ii) the product of the electric utility's decommissioning rate in effect immediately prior to the agreement of sale multiplied by the percentage of the output of the nuclear power plant which the agreement of sale obligates the electric utility to purchase from the new owner of the nuclear power plant. The Commission shall issue an order granting the petition within 30 days after the petition is filed. The Commission's order shall state the aggregate total amount which the order is authorizing the electric utility to collect through its decommissioning rate. The Commission's order shall state that the effectiveness of the revisions to the electric utility's decommissioning rate shall be conditioned on the filing by the electric utility of the revisions reducing its base rate tariffs and providing for credits to its transition charge tariffs as specified in this subsection. Upon completion of the collection of the total amount which the Commission's order authorizes the electric utility to collect through its decommissioning rate, the electric utility shall not be entitled to collect any further amounts of decommissioning costs for its nuclear power plant through a decommissioning rate. Nothing in this Section shall be construed to permit an increase in the overall tariffed rates and charges paid by the electric utility's customers.

(e) In addition to the uses of the proceeds of the sale and issuance of transitional funding instruments authorized by Section 18-103(d)(1), an electric utility which has entered into an agreement to sell a nuclear power plant may use the proceeds from the sale and issuance of transitional funding instruments to make contributions, or to reimburse itself for contributions which the electric utility has made, to decommissioning trusts in accordance with the agreement of sale, in an amount not to exceed 20% of the aggregate principal amount of transitional funding instruments which the electric utility was authorized to cause to have issued pursuant to Section 18-103(d)(6), including for

purposes of this calculation the amount of any transitional funding instruments which the electric utility caused to be issued prior to the date of this amendatory Act of 1999. The use of proceeds authorized by this subsection shall not be subject to Section 18-103(d)(1)(B) and shall not be considered in determining if the percentage limitations on the use of proceeds set forth in the proviso following Section 18-103(d)(1)(E) have been complied with.

(f) None of the authorizations permitted by this Section may be exercised if the sale of the nuclear power plant is disapproved by the Commission.

CREDIT(S)

2000 Electronic Update

Laws 1921, p. 702, Art. XVI, § 16-114.1, added by P.A. 91-50, § 5, eff. June 30, 1999.